

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

REGENCY of IOWA, INC.

**Johnson County, Iowa
Story County, Iowa**

ADMINISTRATIVE CONSENT
ORDER

NO. 2010-AQ-40

TO: Scott Bannister, Registered Agent
Regency of Iowa, Inc.
111 56th Street
Des Moines, Iowa 50312

Regency of Iowa, Inc.
Home Office
40 North 4th Street
Carbondale, Colorado 81623

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Regency of Iowa, Inc. (Regency) for the purpose of resolving the air quality violations which DNR alleges occurred during the demolition and disposal of several mobile homes at mobile home parks owned by Regency in Iowa City, Iowa and Huxley, Iowa. Regency denies that it violated any rule, regulation, or statute governing air quality. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to Technical Requirements:

Ryan Stouder, Field Office 6
Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to Legal Requirements:

Kelli Book, Attorney
Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of Penalty to:

Director of DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

Regency neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. Iowa City Regency Mobile Home Park is located at 4455 Oak Crest Hill Road in Iowa City, Iowa. The Johnson County Assessor's office lists the owner of the mobile home park as Regency of Iowa City, Inc. with the home office located at 40 N. 4th Street in Carbondale, Colorado. This mobile home park has approximately 300 residents with an estimated 234 mobile homes. Regency Mobile Home Court is located at 507 East 1st Street in Huxley, Iowa. The Story County Assessor's office lists the owner of the mobile home part as Regency of Iowa, Inc. with the home office located at 40 N. 4th Street in Carbondale, Colorado. The Iowa Secretary of State lists Regency of Iowa, Inc. as an active Iowa corporation with a home office located at 40 N. 4th Street in Carbondale, Colorado. Under the Regency of Iowa, Inc. information, the Iowa Secretary of State lists Regency of Iowa City, Inc. as an inactive company.

Iowa City Regency Mobile Home Park – Iowa City, Iowa

2. On August 25, 2009, Ryan Stouder, DNR Field Office 6 environmental specialist, investigated a complaint about a demolition project at the Iowa City Regency Mobile Home Park. During his investigation, Mr. Stouder observed a bobcat on site. Mr. Stouder observed six mobile homes in various stages of demolition. The demolition debris from the six homes remained on site, but at the time of the investigation no one was working on the demolition projects. Mr. Stouder spoke to Tina Stroud, the mobile home park site manager. Ms. Stroud explained that most of the mobile homes that were demolished were owned by Churchill Group, Ltd. The Iowa Secretary of State lists Churchill Group, Ltd. as an inactive Iowa company with a home office located at 40 N. 4th Street in Carbondale, Colorado. Ms. Stroud stated that about 60 mobile homes had been abandoned and some of the residents were doing the demolition work to receive reduced rent. The demolitions had been ordered by the previous mobile home manager. The mobile homes had not been tested for asbestos and a demolition notification had not been submitted. Ms. Stroud stated she was unaware of any such requirements. Mr. Stouder informed Ms. Stroud that the demolition had to cease until the asbestos

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inspections could be completed. Mr. Stouder provided Ms. Stroud with a copy of the asbestos regulations and Ms. Stroud stated they would stop any removal until an asbestos inspector could check the piles for asbestos containing material.

3. On September 9, 2009, Mr. Stouder returned to the mobile home park to conduct a follow-up inspection. Ms. Stroud indicated that she had hired a company to remove the debris, but recently fired the company because of the delay in removal.

4. On September 11, 2009, DNR issued a Notice of Violation letter to the mobile home park for the violations discovered during Mr. Stouder investigation. The violations included: failure to submit a demolition notification; failure to conduct a thorough asbestos inspection; and improper solid waste disposal. The letter required that the area be cleaned up by October 1, 2009.

5. On October 1, 2009, Mr. Stouder returned to the mobile home park. He spoke with Ms. Stroud who stated that the debris had been taken to the Iowa City landfill. Mr. Stouder stated that the piles were not to have been removed unless treated as asbestos containing material. Ms. Stroud said she did not know of that requirement and the debris was already gone.

Regency Mobile Home Court – Huxley, Iowa

6. On September 14, 2009, DNR Air Quality Bureau received a complaint regarding the demolition of mobile homes at the Regency Mobile Home Court in Huxley, Iowa. On September 14, 2009, Marion Burnside, DNR asbestos coordinator, conducted an inspection at the mobile home park. During his investigation, Mr. Burnside noted five mobile homes that had been demolished by the employees of the Regency Mobile Home Court. The debris remained on site. Mr. Burnside collected nine samples of suspect material from the demolition debris. During the investigation, Mr. Burnside spoke to Neva Carlson, manager of the Regency Mobile Home Court. She told him that there had been no inspection and no notification prior to the demolitions. She stated the mobile homes were owned by Churchill Group, Ltd.

7. On October 1, 2009, DNR received the results of the laboratory samples. Three of the nine samples contained regulated amounts of asbestos. One sample of roofing material indicated 7% Chrysotile asbestos and another sample of roofing material indicated 12% Chrysotile asbestos. The sample of the black jack material indicated 8% Chrysotile asbestos. The positive samples came from two of the mobile homes.

8. On October 13, 2009, DNR issued a Notice of Violation letter to the mobile home park for the violations discovered during Mr. Burnside's inspection. The letter included the following violations: failure to submit a demolition notification and failure to conduct a thorough asbestos inspection. The letter

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required that the demolition debris be properly removed by a licensed asbestos abatement contractor. The letter required the waste shipment records to be submitted to DNR. Mr. Burnside has confirmed that the cleanup has been completed.

IV. CONCLUSIONS OF LAW

Regency neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.
2. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the mobile homes at the two mobile home parks. The above facts indicate a violation of this provision.
3. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the mobile homes at the two mobile home parks. The above facts indicate a violation of this provision.
4. 40 CFR 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that Regency was not in compliance with these provisions when the demolitions occurred.
5. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. During Mr. Burnside's inspection at the Huxley site, he found asbestos containing material that had not been removed prior to the demolition. The facts in this case indicate that Regency was not in compliance with these provisions.

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6. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. During Mr. Burnside's inspection at the Huxley site, he found dry asbestos containing material that had not been removed prior to the demolition. The facts in this case indicate that Regency was not in compliance with these provisions.

7. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the demolition and disposal of the mobile homes despite the fact regulated asbestos containing material was being disturbed by the demolition activities.

8. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During Mr. Burnside's inspection at the Huxley site, he found asbestos containing material that had not been sealed in leak-tight containers. The facts in this case indicate that Regency was not in compliance with these provisions.

V. ORDER

THEREFORE, it is hereby ordered and Regency agrees to do the following:

1. Regency shall pay a penalty of \$7,500.00 in accordance with the following payment schedule. If any of the payments are not submitted in accordance with the payment schedule, the remaining penalty shall be due immediately.

\$324.00 due October 1, 2010;	\$312.00 due October 1, 2011;
\$312.00 due November 1, 2010;	\$312.00 due November 1, 2011;
\$312.00 due December 1, 2010;	\$312.00 due December 1, 2011;
\$312.00 due January 1, 2011;	\$312.00 due January 1, 2012;
\$312.00 due February 1, 2011;	\$312.00 due February 1, 2012;
\$312.00 due March 1, 2011;	\$312.00 due March 1, 2012;
\$312.00 due April 1, 2011;	\$312.00 due April 1, 2012;
\$312.00 due May 1, 2011;	\$312.00 due May 1, 2012;
\$312.00 due June 1, 2011;	\$312.00 due June 1, 2012;
\$312.00 due July 1, 2011;	\$312.00 due July 1, 2012;
\$312.00 due August 1, 2011;	\$312.00 due August 1, 2012;
\$312.00 due September 1, 2011;	\$312.00 due September 1, 2012.

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VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$7,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." DNR maintains that failure to follow the proper asbestos NESHAP regulations has allowed Regency to gain an economic benefit in that Regency was able to avoid the cost of an asbestos inspection and saved time by not notifying the DNR of the demolition. DNR maintains that the estimated cost of an inspection for one mobile home is estimated to be \$800.00. DNR maintains that Regency demolished at least 11 mobile homes without conducting the asbestos inspection. Therefore, DNR estimates that Regency saved at least \$8,800.00. However, based on the gravity and culpability of these violations and the DNR's decision to handle the violations administratively, only \$5,000.00 is being assessed for this factor. Regency denies any noncompliance and enters into this administrative consent order for settlement purposes only.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Asbestos is known to cause cancer and is a hazardous air pollutant. DNR alleges that failure to comply with the asbestos regulations has caused possible asbestos fibers to be released into the air through the demolition of the structures. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Therefore, \$1,500.00 is assessed for this factor. Regency denies any

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noncompliance and enters into this administrative consent order for settlement purposes only.


Culpability – Regency has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Based on the above considerations, \$1,000.00 is assessed for this factor. Regency denies any noncompliance and enters into this administrative consent order for settlement purposes only.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Regency. For that reason, Regency waives the right to appeal this administrative consent order or any part thereof.

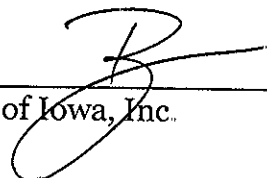
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146.



PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 5th day of
10, 2010.



Regency of Iowa, Inc.

Dated this 28th day of
September, 2010.

Barb Stock (No Asbestos Number); Kelli Book; DNR Field Office 6; EPA; VII.C.4